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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO.                     |
|--|-------------|----------------------|---------------------|--------------------------------------|
| 09/966,845   | 09/28/2001  | Barbara J. Boe       | 065027.0103         | 4972                                 |
| 5073   | 7590        | 05/26/2009           |                     | EXAMINER                             |
| BAKER BOTTS L.L.P.<br>2001 ROSS AVENUE<br>SUITE 600<br>DALLAS, TX 75201-2980 |             |                      |                     | RETTA, YEHDEGA                       |
|  |             |                      | ART UNIT            | PAPER NUMBER                         |
|  |             |                      | 3622                |                                      |
|  |             |                      |                     | NOTIFICATION DATE      DELIVERY MODE |
|  |             |                      |                     | 05/26/2009      ELECTRONIC           |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[ptomail1@bakerbotts.com](mailto:ptomail1@bakerbotts.com)  
[glenda.orrantia@bakerbotts.com](mailto:glenda.orrantia@bakerbotts.com)

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 09/966,845             | BOE ET AL.          |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Yehdega Retta          | 3622                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 April 2009.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 and 26 is/are pending in the application.  
 4a) Of the above claim(s) 29-87 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-14 and 26 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| - Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Reissue oath/declaration***

The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

***Claims 1-14 and 26 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.***

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

“Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant.”

See MPEP § 1414.01.

### ***Improper Reissue Amendment***

The amendment filed May 31, 2006 and April 6, 2009 proposes amendments to claims 1, 8-13 and 26 that do not comply with 37 CFR 1.173(b), which sets forth the manner of making amendments in reissue applications. A supplemental paper correctly amending the reissue application is required.

§ 1.173 Reissue specification, drawings, and amendments.

(b) Making amendments in a reissue application .. An amendment in a reissue

Art Unit: 3622

application is made either by physically incorporating the changes into the specification when the application is filed, or by a separate amendment paper. If amendment is made by incorporation, markings pursuant to paragraph (d) of this section must be used. If amendment is made by an amendment paper, the paper must direct that specified changes be made, as follows:

(2) Claims . An amendment paper must include the entire text of each claim being changed by such amendment paper and of each claim being added by such amendment paper. For any claim changed by the amendment paper, a parenthetical expression "amended," "twice amended," etc., should follow the claim number. Each changed patent claim and each added claim must include markings pursuant to paragraph (d) of this section, except that a patent claim or added claim should be canceled by a statement canceling the claim without presentation of the text of the claim.

(c) Status of claims and support for claim changes . Whenever there is an amendment to the claims pursuant to paragraph (b) of this section, there must also be supplied, on pages separate from the pages containing the changes, the status (i.e., pending or canceled), as of the date of the amendment, of all patent claims and of all added claims, and an explanation of the support in the disclosure of the patent for the changes made to the claims.

(d) Changes shown by markings . Any changes relative to the patent being reissued which are made to the specification, including the claims, upon filing, or

by an amendment paper in the reissue application, must include the following markings:

(1) The matter to be omitted by reissue must be enclosed in brackets; and

(2) The matter to be added by reissue must be underlined, except for amendments submitted on compact discs (§§ 1.96 and 1.821(c)). Matter added by reissue on compact discs must be preceded with "<U>" and end with "</U>" to properly identify the material being added.

(e) Numbering of patent claims preserved. Patent claims may not be renumbered. The numbering of any claim added in the reissue application must follow the number of the highest numbered patent claim.

(f) Amendment of disclosure may be required . The disclosure must be amended,

when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(g) Amendments made relative to the patent. All amendments must be made relative to the patent specification, including the claims, and drawings, which are in effect as of the date of filing of the reissue application.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Art Unit: 3622

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

YR  
/Yehdega Retta/  
Primary Examiner, Art Unit 3622

/Eric W. Stamber/  
Supervisory Patent Examiner, Art Unit 3622